

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 TEN TALENTS INVESTMENT 1 LLC,

10 Plaintiff,

11 v.

12 OHIO SECURITY INSURANCE
COMPANY,

13 Defendant.

CASE NO. C12-5849 RBL

ORDER REQUESTING RESPONSE
TO MOTION FOR
RECONSIDERATION

14 THIS MATTER is before the Court on Ohio Security's Motion for Reconsideration [Dkt.
15 #24] of the Court's Order [Dtk. #22] Granting Plaintiff Ten Talents' Motion to Compel [Dkt.
16 #14] production of documents withheld from Ohio's claims file under the attorney-client
17 privilege.

18 The Motion for Reconsideration is based on two arguments:

- 19 1. The Court erroneously believed that Ohio was asserting an "advice of counsel"
20 defense to Ten Talents' bad faith claims; and
- 21 2. Under *Cedell v Farmers*, 295 P.3d 239 (Wash. 2013), the presumption that there
22 is no attorney-client privilege in first party bad faith litigation can be overcome by a showing that
23 the attorney was not engaged in the claim investigation, but was instead providing only a legal
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1 opinion about whether coverage exists under the law. This determination is made by the Court
2 following an *in camera* review of the disputed documents.

3 The Court has conducted an *in camera* review and is satisfied that Mr. McAllister did not
4 participate in the investigation and instead provided advice only on the subject of whether
5 coverage existed on a given set of facts.

6 Nevertheless, under Local Rule 7(h), no motion for reconsideration will be granted unless
7 an opposing party has been afforded the opportunity to file a response. The Court hereby
8 REQUESTS that Ten Talents file a short Response to the Motion for Reconsideration, if it
9 believes that either of these two issues is still in play. The Response should be no more than 8
10 pages and should be filed no later than May 31.

11 || IT IS SO ORDERED.

12 || Dated this 22nd day of May, 2013.

Ronald B. Leighton

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE